

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Labar Spann, ) Case No. 2:18-cv-01778-DCC  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Heinz Peter Schafer, Kelly LNU, )  
 Columbia Regional Care Center, )  
 )  
 Defendants. )  
 )

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**ORDER**

This matter is before the Court upon Defendants' motion for summary judgment. ECF No. 41. Plaintiff filed a response in opposition, Defendants filed a reply, and Plaintiff filed another response in opposition.<sup>1</sup> ECF Nos. 49, 50, 51. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Mary Gordon Baker for pre-trial proceedings and a Report and Recommendation ("Report"). On May 22, 2019, the Magistrate Judge issued a Report recommending that Defendants' motion for summary judgment be granted on the merits and the case be dismissed with prejudice. ECF No. 52. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and the serious consequences if they failed to do so. Plaintiff has filed no objections, and the time

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<sup>1</sup> The briefs in response submitted by Plaintiff are identical. The Court notes that Plaintiff submitted one additional exhibit in his first response; however, it does not alter any of the conclusions reached by the Magistrate Judge. See ECF No. 49-2 at 5.

to do so has lapsed.<sup>2</sup> Defendants filed limited objections requesting that the Court reject the portion of the Report wherein the Magistrate Judge concluded that Defendants were not entitled to summary judgment on the ground that Plaintiff failed to exhaust his administrative remedies. ECF No. 54.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

As noted above, the Court has reviewed Defendants’ objections to the Report. However, because neither party has objected to the Magistrate Judge’s analysis of the merits of Plaintiff’s claims, the Court finds it is unnecessary to reach Defendants’ objections. The Court has reviewed the record, applicable law, and the Magistrate

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<sup>2</sup> Plaintiff asked for and received an extension of time to file objections. The additional time has expired, and Plaintiff has not objected to the Report.

Judge's Report with respect to the merits of Plaintiff's claims. Having done so, the Court finds no clear error and agrees with the recommendation of the Magistrate Judge. Accordingly, Defendants' motion for summary judgment [41] is **GRANTED** and this action is dismissed with prejudice.<sup>3</sup>

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.  
United States District Judge

June 18, 2019  
Spartanburg, South Carolina

#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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<sup>3</sup> The Court further agrees with the Magistrate Judge with respect to Defendants' request to designate this action as a "strike." The Court declines to designate this action as a strike under 28 U.S.C. § 1915(g).